

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WARD WHITE,

No. 3:21-cv-01524-JR

Plaintiff,

ORDER

v.

UNITED HERITAGE PROPERTY &  
CASUALTY COMPANY,

Defendant.

HERNÁNDEZ, District Judge:

Magistrate Judge Russo issued a Findings and Recommendation on January 27, 2023, in which she recommends that this Court grant in part and deny in part Plaintiff's motion for summary judgment and grant in part and deny in part Defendant's motion for summary judgment. F&R, ECF 47. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Both Plaintiff and Defendant filed timely objections to the Magistrate Judge's Findings and Recommendation. Pl. Obj., ECF 49; Def. Obj., ECF 50. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiff's and Defendant's objections and has reviewed the pertinent portions of the record *de novo*. The Court adopts the Findings & Recommendation with the following modification: Defendant's motion to dismiss Plaintiff's negligence per se claim is granted. The Court finds that the ruling by Oregon Court of Appeals in *Moody v. Oregon Community Credit Union*, 317 Or. App. 233, 505 P.3d 1047 (2002), *rev. allowed*, 369 Or. 855, 512 P.3d 446 (Table) (2022), has not definitively changed Oregon law to allow a plaintiff to bring a negligence per se claim against an insurer for impermissible claim settlement practices in violation of O.R.S. 746.230. Additionally, because Plaintiff cannot recover either emotional distress damages or punitive damages, his negligence per se claim fails. Otherwise, the Court finds no error in the Magistrate Judge's Findings & Recommendation.

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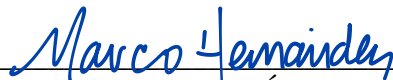
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### CONCLUSION

The Court ADOPTS Magistrate Judge Russo's Findings and Recommendation [47]. Therefore, Plaintiff's Motion for Partial Summary Judgment [26] is GRANTED in part and DENIED in part, and Defendant's Motion for Summary Judgment [33] is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

DATED: March 23, 2023.

  
MARCO A. HERNÁNDEZ  
United States District Judge